

**In the High Court of Uttarakhand, at
Nainital.**

(Stay Vacation Application No. 7075/2006)
with

Civil Revision No. 03 of 2006

- 1- Alliance Builders and Contractors Ltd.
Corporate Office Stadium Road Bareilly U.P.
Local Office- 55, 56, S.G.A.D. Plaza Nainital
Road, Rudrapur, District U.S. Nagar.
 - 2- Guru Charan Singh S/o Khazan Singh,
 - 3- Ramandeep Arora S/o Gurucharan Singh
 - 4- Aman Deep Arora S/o Gurucharan Singh
R/o Village Bhasia, Tehsil Khatima,
District U.S. Nagar, Presently R/o Model
Town Bareilly, Distt.
Bareilly (U.P.) ... Revisionists.
- Vs.

- 1- Civil Judge (S.D.) Rudrapur U.S. Nagar.
- 2- State of Uttarakhand through Collector,
Rudrapur, U.S. Nagar.
- 3- Devendra Singh S/o Vijai Bahadur Singh R/o
Gramine Vikas Shansthan Opposite Sonia
Hotel, Rudrapur, District U.S. Nagar.
- 4- Mukesh Saxena S/o Ramesh Chandra R/o
Sharda Nagar, Rudrapur,
Udham Singh Nagar ...respondents.

Sri S.Dhulia, learned Senior Advocate, assisted by Sri Bipul Sharma,
and Sri N.G. Singh, learned counsel for the revisionists.
Sri L.P. Naithani, learned Senior Advocate, assisted by Sri Lalit
Sharma, and Sri Sunil Khara, learned counsel for the respondents.

Hon'ble B.C. Kandpal, J:

This revision, U/S 115 C.P.C., has been filed by the defendants against the order dated 20-12-2005 passed by Civil Judge (S.D.) Udham Singh Nagar, in O.S. No. 105/2005, Devendra Singh and others Vs. Alliance Builders and Contractors Ltd. and others.

- 2- Brief facts of the case are that the respondent No.3 Devendra Singh and others filed a suit for permanent and mandatory injunction against the defendants/revisionists on the ground that the defendants/ revisionists being builders are raising a

multi-storied building over the agricultural land without having clearance by the concerned authorities. It has also been alleged in the plaint that the defendants/ revisionists do not have any right to purchase the land and to raise the construction in Uttaranchal. It is also alleged that the no-objection certificates whatsoever obtained by the defendants/revisionists is that result of fraud and misrepresentation and the sale-deed whatsoever is also forged as well as null and void.

3- The defendants/revisionists moved the application 64-C under Order-7, Rule-1 C.P.C., praying therein that the suit be dismissed, as there is no allegation in the plaint that the act of the defendants/revisionists is causing any public nuisance. It is also objected by the defendants/revisionists that the civil court has no jurisdiction to try the suit. The defendants/revisionists also moved the applications 54-C, 56-C and 99-C, U/S 91 of the C.P.C. read with Order 1, Rule-8 C.P.C.

4- The trial court after having considered the entire material available on record, was pleased to observe that without having entire material and the evidence to be adduced by the parties, this controversy cannot be decided at this stage. The trial court has also observed that only after the assessment of the evidence the matter could be decided and in the absence of evidence to be adduced by the parties it would not be justified to dismiss the suit prima facie. The trial court accordingly rejected the applications filed by defendants vide order dated 20-12-2005.

5- Feeling aggrieved by the aforesaid impugned order the defendants have preferred this revision before this court.

6- Heard learned counsel for the parties and perused the record.

7- After having considered the arguments advanced by the learned counsel for the parties and perusing the entire documents available on the record, I am of the view that it is the job of the trial court to decide this controversy only after perusal of the evidence to be adduced by the parties. The trial court is perfectly justified in passing the impugned order by which the applications of the defendants/revisionists have been dismissed. This court is not supposed to decided the case by exercising the power of the trial Judge at the revisional stage.

8- I do not find any impropriety, incorrectness or illegality or any error of jurisdiction in the impugned order passed by the court below.

9- The revision lacks merit and is liable to be dismissed.

10- Accordingly the revision is dismissed in limine.

11- The trial court is directed to proceed further in the suit in order to decide the dispute in question, in accordance with law.

(B.C. Kandpal, J.)

Date: 11-10-2006.